reverse the decree of the Assistant Judge, and confirm that of the Subordinate Judge. The respondent to pay the appellant's costs both in this and in the lower Appellate Court.

1887.
DÁJI HIMAT
v.
DHIRAJRÁM SADÁRÁM.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

NA'RA'YAN CHITKO JUVEKAR, (ORIGINAL DEFENDANT), APPELLANT, *v.* VITHUL PARSHOTAM, (ORIGINAL PLAINTIFF), RESPONDENT.*

1887.
April 25.

Decree—Execution—Decree specifying a certain time for execution—Construction—Condition precedent—Limitation.

The plaintiff obtained a decree on the 25th July, 1882, which directed that he should give the defendant possession of certain parcels of land at the end of next *Márgashirsha* (*i.e.*, 9th January, 1883,) and that, on his doing so, the defendant should remove certain hedges and sheds, and restore the land in suit to the plaintiff. On the 9th December, 1885, the plaintiff applied to execute the decree. The defendant resisted the application as being time-barred. He contended that the plaintiff, having failed to deliver up the land in his possession within the time specified in the decree, he had lost his right to execute the decree.

Held, that the application was not time-barred. The specification of the end of *Márgashirsh* had merely the effect of postponing the operation of the decree till that time, and the plaintiff had three years from that date within which he might seek execution.

The mention of a term when a particular right is to become enforceable, is not a condition precedent, whether the enforcement be otherwise subject to a condition or not.

SECOND appeal from the order of H. J. Parsons, District Judge of Thána, confirming the order of the Subordinate Judge of Panvel in *darkhást* No. 2153 of 1885.

The plaintiff obtained a decree, dated 25th July, 1882, which was to this effect: "The plaintiff should give the defendant possession of certain land at the end of next *Márgashirsha* (*i.e.*, 9th January, 1883); on his so doing, the defendant should remove the hedges and cowshed, and make over the land in suit to the plaintiff." On the 9th December, 1885, the plaintiff made

* Second Appeal, No. 523 of 1886.

1887.

NÁRÁYAN CHITKO JUVEKAR v. VITHUL PARSHOTAM.

an application for execution of the above decree. He stated therein that he was willing to give up to the defendant the land mentioned in the decree, and he asked that the defendant should be ordered to accept it, to remove the hedges and the cowshed, and to restore the land in suit to him.

The defendant resisted this application, on the ground that it was beyond time. He contended that the plaintiff had a certain time within which to do a certain thing, and not having done it within that time, he had lost his right to execute the decree. Both the lower Courts overruled this objection, and held that the application was within time. The District Judge was of opinion that the decree fixed the end of *Márgashirsha* (9th January, 1883,) as the time when it was to come into force when the plaintiff was to hand over to the defendant the land mentioned in the decree. He, therefore, held that from the time so specified the plaintiff had three years within which he could execute the decree.

Against this decision the defendant appealed to the High Court.

Gokuldás Kahándás for the appellant:—By the terms of the decree a condition precedent is annexed to the advantage to be got by the plaintiff. Without satisfying the condition he is not entitled to the advantage. He has allowed the time fixed by the decree to pass by, and he cannot execute the decree any longer. The application is thus time-barred—*Hingan Khán* v. *Gangá Parshad*(1).

M. B. Chaubal for the respondent:—The specification of the time is not a condition precedent. It merely postpones the operation of the decree. It becomes capable of execution on the day specified—*Gureebullah Sirkár* v. *Mohun Láll Shaha*(2); *Ugráh Nathú* v. *Laganmani*(3). Neither party could assert his rights under the decree before that day. Limitation, therefore, runs from the date so fixed.

WEST, J.:—The District Court in this case adjudged that the defendant should remove certain hedges and sheds by which the plaintiff was injured, but only on the plaintiff's delivering to the

(1) I. L. R., 1 All., 293. (2) I. L. R., 7 Calc., 127. (3) I. L. R., 4 All., 83.

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NÁRÁYAN CHITKO JUVEKAR v. VITHUL PARSHOTAM.

defendant two parcels of ground held by the former. As the land, it appears, at the time of the decree, July, 1882, was occupied with growing crops, the decree deferred the time of fulfilment by saying that "the plaintiff is to give the defendant possession, &c., at the end of next *Márgashirsha* (*i. e.*, 9th January, 1883), and on his doing this, the defendant is to remove the hedges, &c., and make over the land in suit to the plaintiff." It is now contended that the specification of the end of next *Márgashirsha* formed part of a condition precedent, and that having failed to satisfy this condition through his delay, the plaintiff has lost the contingent advantage bestowed on him by the decree, and can no longer execute it. The District Judge has understood the decree as merely fixing a time from which it was to take effect, so that the meaning was merely that nothing was to be done before the end of *Márgashirsha*. We think this is the correct view. It is not said that the plaintiff doing what he had to do on or before the end of *Márgashirsha* should then recover from the defendant. He could not demand any fulfilment by the defendant before the end of that month. Thus the operation of the decree as a command was wholly postponed until the time indicated which was thus prescribed as a term rather than as a condition[1]. There is no provision that, failing fulfilment by the plaintiff at the end of *Márgashirsha*, his right under the decree is to fail, and such an expression is what one would look for where the precise date was intended to form an essential element of the condition. As the case stands, we think that the specification of the end of *Márgashirsha* has merely the effect of making the decree speak as from that time, and that conditional as it is with respect to the step to be taken by the plaintiff, the plaintiff had three years from the 9th January, 1883, within which he might seek execution. The construction demanded by the appellant would have this consequence, that, whereas a simple order for reciprocal delivery would have allowed the plaintiff three years from July, 1882, for execution, the postponement of operation of the decree would cut down the time allowed him to six months. The case of *Sidney* v. *Vaughan*[2] shows that the men-

(1) See Ev. Poth. SS. 230, 237; Colebr. Obl., Sec. 228.

(2) 2 Bro. P C., 254 (2nd ed.)

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tion of something to be done coupled with an expression of time may but serve to indicate a term not to impose a condition *sine quâ non.* The mention of a term when a particular right is to become enforceable is not a condition whether the enforcement be otherwise subject to a conditon or not.

We confirm the decree of the District Court with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1887. *April 28.*

YASHVANTRA'V, (ORIGINAL OPPONENT), APPELLANT, *v.* KA'SHIBA'I, (ORIGINAL PETITIONER), RESPONDENT.*

Maintenance—Hindu law—Incontinence of a co-parcener's concubine disentitling her to maintenance.

Continued continence is, under the Hindu law, a condition precedent to a deceased co-parcener's concubine claiming maintenance.

APPEAL from a decision of G. Druitt, Acting Assistant Judge (F. P.) of Belgaum at Kalàdgi.

The petitioner, who had been the concubine of the appellant's father, obtained a decree for maintenance against the appellant and his brother, which she now sought to execute. The appellant alleged that the petitioner had been living in prostitution, and had consequently forfeited her right to the maintenance awarded to her by the decree.

The Assistant Judge, however, ordered execution to issue. He said :—

"Opponent No. 2 is of course liable under the decree. No specific sources of income are charged with the payment of this allowance by the decree. It seems to follow, by analogy from the decision in *Párvati* v. *Bhiku*[1], that incontinence subsequent to the order awarding the allowance would not cause it to be forfeited * * * * * * *"

* Appeal, No. 29 of 1884.

(1) 4 Bom. H. C. Rep., 25, A. C. J.